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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ECOPETROL, S.A.

Plaintiff,

v.

CONTINENTAL ELECTRIC MOTORS, INC.,

Defendant.

Case No. 2:21-cv-3031

Jury Trial Demanded

COMPLAINT

Plaintiff Ecopetrol, S.A. (hereinafter “Ecopetrol” or “Plaintiff”), which has its principal place of business at Carrera 13 No. 36-24 Piso 8, Bogota, Distrito Capital, F8 00000, files this Complaint against Defendant Continental Electric Motors, Inc. (hereinafter “Continental” or “Defendant”), which has its principal place of business at 23 Sebago Street, Clifton, New Jersey, 07013, and alleges as follows:

NATURE OF THE ACTION

1. This is an action for breach of contract.
2. Ecopetrol, the largest petroleum company in Colombia, needed to replace old stirrer motors in the reactors of polyethylene plants at one of its facilities in Colombia, but had to find a new manufacturer as the original manufacturer had stopped making such motors.
3. Continental boasts that “[f]or more than 40 years, Continental Electric has been the world’s foremost manufacturer of Stirrer Motors (Reactor Motors) for the Low Density Polyethylene (LDPE) market,” and that it has the ability to hand-build motors to meet each of its individual customer’s requirements. Thus, Ecopetrol turned to Continental for help with replacing the stirrer motors that it needed.
4. Ecopetrol agreed to pay Continental more than US\$700,000 for Continental to custom manufacture and deliver to Ecopetrol a series of stirrer motors that met specifications provided by Ecopetrol. Ecopetrol even provided Continental with a sample of the stirrer motor that Ecopetrol needed to replace in its reactors. But Continental has failed to deliver motors that meet the required specifications, leaving Ecopetrol out more than US\$700,000 and without the replacement motors it needs for its polyethylene plant reactors.

THE PARTIES

5. Ecopetrol is a public limited company organized and existing under the laws of the Republic of Colombia and having its principal place of business in Bogotá, Colombia.

6. Continental is a for profit corporation organized and existing under the laws of the State of New Jersey and having its principal place of business at 23 Sebago Street, Clifton, New Jersey, 07013.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because this is a civil action between a citizen of the State of New Jersey and a citizen of the Republic of Colombia and because the amount in controversy exceeds the sum or value of US\$75,000 exclusive of interest and costs. This court also has federal question jurisdiction under 28 U.S.C. § 1331 as this is a civil action arising under the United Nations Convention on Contracts for the International Sale of Goods.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(1) because Continental is a resident of New Jersey, and also under 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to Ecopetrol's claim occurred in New Jersey.

FACTUAL BACKGROUND

Ecopetrol's Business

9. Ecopetrol, which was established in 1951, is the largest and primary petroleum company in Colombia.

10. Ecopetrol is a mixed economy company, of an integrated commercial nature in the oil and gas sector, which participates in all links of the hydrocarbon chain: exploration, production, refining and commercialization.

11. It has operations in the center, south, east and north of Colombia, as well as abroad. It has two refineries in Barrancabermeja and Cartagena and three ports for the export and import of fuels and crude oil in Coveñas and Cartagena on the Caribbean Sea, and Tumaco on the Pacific Ocean. Ecopetrol is also in the biofuels business and has a presence in Brazil, Peru, Mexico and the United States (Gulf of Mexico and Permian Basin in Texas).

12. Ecopetrol is committed to social and environmental investment. Under its current business plan, Ecoperol expects to allocate between US\$350 and US\$400 million to help close socioeconomic gaps in Colombia and boost sustainable community development and wellbeing, with a focus on public and community infrastructure, public services, education, sports and health, rural development and business entrepreneurship.

13. In line with its objectives of reducing the carbon emissions associated with its operations and promoting efficient and sustainable water management, Ecopetrol's current business plan allocates US\$420 to US\$580 million for investments in projects to help reduce carbon emissions, enhance wastewater treatment, and provide potable water and sanitation to hundreds of thousands of Colombian residents across 40 municipalities.

Ecopetrol Contracts with Continental

14. In July 2015, Ecopetrol entered into an agreement with Continental through which Continental agreed to manufacture a series of special stirrer motors for Ecopetrol's Barrancabermeja refinery in accordance with technical, manufacturing, design and material specifications and a sample motor that Ecopetrol provided to Continental ("Contract" or "Purchase Order").

15. Ecopetrol had contacted Continental to inquire about its capabilities to manufacture stirrer motors in 2013. Ecopetrol needed to replace several stirrer motors in the reactors of the polyethylene plants in its Barrancabermeja refinery, but the original manufacturer of those motors had stopped making them.

16. Ecopetrol's project department identified Continental as a potential alternative manufacturer for replacement stirrer motors. Continental boasts that it "designs and engineers a broad selection of industrial and electric motors, reactor/stirrer motors and motor generator sets. These are widely used in oil

refineries, chemical plants, machine tool builders, water treatment plants and for high pressure chemical applications.” Continental identifies numerous other leading petroleum companies as its customers, including American Oil, Atlantic Oil Refining, British Petroleum, Exxon Mobil, Sun Oil Company, and Texaco

17. Continental also holds itself out as being capable of delivering “unique motor[s] that[are] specific to a customer’s needs and resources.” Indeed, Continental tells its potential customers: “At Continental, there's no such thing as an ‘off the shelf’ motor,” and “We don't roll generic motors off an assembly line in our facility; motors are hand-built for each individual customer’s requirements and application. At Continental, motors are made to meet the job.”

18. Ecopetrol and Continental agreed that Continental would manufacture a set of motors in accordance with the technical specificities and a sample motor provided by Ecopetrol, and the parties’ entered into the Contract, which is documented by Purchase Order No. 5224576.

19. As translated from the original Spanish, the Contract explicitly provides that Continental (referred to as the “Supplier”) must manufacture the motors (“referred to as the “goods”) in accordance with the specifications provided by Ecopetrol:

The goods may be subject to inspection by ECOPETROL or its representatives, whenever this Company deems it necessary. The SUPPLIER shall allow ECOPETROL to inspect the goods in the SUPPLIER's facilities / facilities. However, ECOPETROL is not obliged to inspect the goods.

The inspection of the goods by ECOPETROL does not mean that the SUPPLIER is exempted from its responsibility in the delivery of the goods in accordance with the requirements contained or annexed to this document.

The goods that are the object of this Purchase Order must comply with the regulations set forth in annex PPQ-CEE-ET-001 Technical Specification of stirrer motor motors and other specifications delivered as annexes of the process. The SUPPLIER will be responsible for the quality of the goods, as well as the inputs used in their manufacture.

20. Ecopetrol agreed to—and did—pay US\$719,141.88 for the motors.

Continental Breaches the Parties' Contract

21. The Contract required Continental to deliver motors meeting the required specifications to Ecopetrol by March 29, 2016.

22. The parties subsequently amended the Contract three times to extend the date by which Continental was to deliver the motors. Ultimately, Continental failed even to meet the extended deadline to which the parties had agreed.

23. In April 2017, Ecopetrol received a shipment of motors made by Continental, but these motors did not comply with the specifications that Ecopetrol had provided to Continental.

24. Specifically, the motors that Continental delivered did not meet the technical and dimensional specificities and requirements agreed upon by the parties, were not built in accordance with the manufacturing drawings or the sample motor provided by Ecopetrol, were not manufactured with materials of the specified quality, and failed to meet other standards agreed upon by the parties. Consequently, the motors delivered by Continental are unusable.

25. Ecopetrol notified Continental the motors they sent to Ecopetrol were not acceptable given that those motors failed to meet the specifications and other requirements to which the parties had agreed.

26. In addition to the US\$719,141.88 that Ecopetrol paid Continental for motors that Continental has never delivered, Continental's failure to deliver conforming motors has forced Ecopetrol to incur additional expenses maintaining old motors that are in need of replacement and caused Ecopetrol other losses.

27. Continental has also failed to provide certain required documentation for the motors, and failed to return the sample motor to Ecopetrol, which has caused Continental additional losses.

28. Ecopetrol has made numerous requests of Continental to deliver motors that meet the specifications agreed to by the parties, but Continental has failed to do so.

CLAIM FOR RELIEF

Count I—Breach of Contract

29. Ecopetrol incorporates by reference and realleges each of the allegations in paragraphs 1 through 28.

30. Ecopetrol and Continental entered into a written Contract through which Continental promised to manufacture and deliver to Ecopetrol a series of motors that met the required specifications and matched the sample motor provided by Ecopetrol, and Ecopetrol promised to pay US\$719,141.88 for the motors.

31. Ecopetrol has fulfilled its obligations under the parties' Contract and paid the amount of US\$719,141.88 to Continental.

32. Continental has failed to fulfill its obligations under the parties' Contract, as it has not delivered motors meeting the specifications and sample motor provided by Ecopetrol.

33. Continental's failure to deliver the motors meeting the specifications required under the Contract is a fundamental, material breach of the Contract.

34. Continental's breach has caused Ecopetrol damages, including but not limited to, the US\$719,141.88 that Ecopetrol paid to Continental for motors that

Continental has never provided, and costs and lost revenue due to continued use of old motors in need of replacement, in addition to other damages and costs.

PRAYER FOR RELIEF

WHEREFORE, Ecopetrol respectfully requests this Court:

- A. Enter a judgment in favor of Ecopetrol and against Continental;
- B. Award Ecopetrol damages in the amount of the US\$719,141.88 that Ecopetrol paid to Continental for motors that Continental has failed to deliver;
- C. Award Ecopetrol additional money damages in an amount to be determined at trial;
- D. Award Ecopetrol its costs for this action; and
- E. Award Ecopetrol such other relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Ecopetrol demands a trial by jury on all issues so triable.

Dated: February 19, 2021

Respectfully submitted,

/s/ Francis X. Nolan, IV

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VERIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

I, **<<DIANA CAROLINA ARIAS BUITRAGO>>**, verify as follows:

1. I am **GENERAL POWER OF ATTORNEY ACCORDING TO POWER OF ATTORNEY GRANTED BY PUBLIC DEED** No. 2392 de fecha May 4 de 2.009 - Notary 6^a of Bogotá,) of the Plaintiff, Ecopetrol, S.A.
2. I have reviewed the foregoing Complaint.
3. I have reviewed Ecopetrol records relating to the matters set forth in the Complaint.
4. The factual allegations set forth in the foregoing Complaint of Ecopetrol, S.A. against Continental Electric Motors, Inc. are, to the best of my knowledge and recollection, true and correct.

I verify under penalty of perjury of the United States of America that the foregoing is true and correct.

Executed on February 19, 2021 in Barrancaberja, Colombia.

DocuSigned by:
Diana Carolina Arias Buitrago
F18611D22BD5457

<< DIANA CAROLINA ARIAS BUITRAGO >>

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

I, Francis X. Nolan, IV, hereby certify under penalty of perjury that I am not presently aware of any other action pending in any court, or of any pending arbitration or administrative proceeding related to the matter in controversy in this action.

Executed on February 19, 2021.

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